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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,990	07/02/2001	Michael John Bader	2001B053	1190

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EXAMINER

JACKSON, MONIQUE R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/896,990	Applicant(s) BADER ET AL.	
	Examiner Monique R Jackson	Art Unit 1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 March 2005.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 15-20, 22-27 and 29-36 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 15-20, 22-27 and 29-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

1. The amendment filed 3/29/05 has been entered. Claims 15-20, 22-27 and 29-36 are pending in the application. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. The indicated allowability of claims 15-20, 22-24, 31-33 and 36 is withdrawn in view of the newly discovered reference(s) to Kong et al. Rejections based on the newly cited reference(s) follow.
3. Applicant is advised that should claims 16, 17, and 19 be found allowable, claims 20, 24 and 23, respectively, will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

4. Claims 15-17, 19-20, and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Kong et al (USPN 6,326,068.) Kong et al teaches a biaxially oriented, multilayer film comprising a HDPE skin layer, an isotactic polypropylene core layer B, an intermediate layer C, and a sealing layer D comprising a heat sealable polymer such as ethylene-propylene copolymer or EPB terpolymer, wherein the layers have thickness ranges and resulting weights that fall within the instantly claimed ranges, and wherein the sealing layer D has a thickness of less than 4 microns, preferably from 2 to 4 microns, and further comprises 1000 to 20,000ppm of an antiblocking agent, particularly a crosslinked polymethyl methacrylate, having an average

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particle diameter greater than 6 microns (*hence at least 150% greater than the maximum sealing layer thickness*), preferably from 6 microns to 15 microns (*hence meeting the limitation that the particles have 10% greater than the thickness of the skin*; Abstract; Col. 3, 40-Col. 4, line 67; Col. 5, lines 5-8 and 41-62; Col. 6, lines 3-25.) Kong et al further teaches that layer A may be metallized such as by aluminum and that the film may further include tie layers (Col. 4, lines 3-25; Examples.)

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 103

5. Claims 18, 25-27 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kong et al. The teachings of Kong et al are discussed above. Though Kong et al teach preferred thickness ranges for the layers, Kong et al does not teach that the skin layer comprising the particulate antiblocking agent has a thickness of 5.5-10 microns as instantly claimed. However, Kong et al teach that the thickness of layers C and D may be from about 15 to 70% of the total thickness of the film with layer C being about 10 to about 90% of the thickness of layers C and D with layer D having the primary function of sealing the film and preferably being thinner than layer C. Therefore, considering the thickness of the overall film as well as the thickness of the sealing layer are result-effective variables affecting the barrier, sealing and

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mechanical properties of the film, one having ordinary skill in the art at the time of the invention would have been motivated to utilize routine experimentation to determine the optimum film thickness and individual layer thickness to provide the desired packaging and sealing properties for a particular end use.

Response to Arguments

6. Applicant's arguments filed 3/29/05 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 571-272-1508.

The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique R. Jackson
Primary Examiner
Technology Center 1700
June 27, 2005